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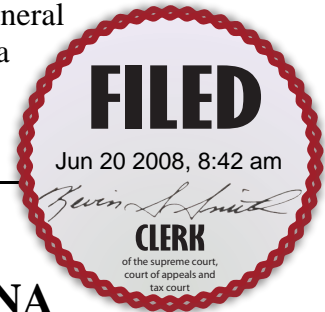
ATTORNEY FOR APPELLANT:

**ANN M. SUTTON**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**SHELLEY M. JOHNSON**  
Deputy Attorney General  
Indianapolis, Indiana



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DERRICK K. CLAY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0712-CR-1077

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APPEAL FROM MARION SUPERIOR COURT  
The Honorable Steven R. Eichholtz, Judge  
Cause No. 49G23-0702-FD-24644

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**June 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Derrick K. Clay challenges the appropriateness of his sentence following his conviction pursuant to a guilty plea to class B felony dealing in cocaine and class B misdemeanor battery. The facts most favorable to the trial court's judgment indicate that on February 10, 2007, Clay got into a fight with a security guard working at a nightclub in Marion County. Police were summoned to the scene, and a search incident to a lawful arrest of Clay uncovered crack cocaine in his pocket. Clay acknowledged that the cocaine was intended for use as well as distribution.

On February 13, 2007, the State charged Clay with class D felony criminal recklessness with a deadly weapon, class D felony possession of cocaine, class A misdemeanor possession of paraphernalia, and class B misdemeanor battery. On March 21, 2007, the State added one count of class A felony possession of cocaine and one count of class A felony dealing in cocaine.

On September 14, 2007, Clay entered into a plea agreement in which he agreed to plead guilty to class B misdemeanor battery and class B felony dealing in cocaine. The parties additionally agreed to a ten-year cap on the executed portion of the sentence, and the State agreed not to seek a habitual substance offender enhancement.

On November 5, 2007, Clay pled guilty pursuant to the plea agreement. The trial court accepted the plea agreement and sentenced Clay to ten years on the felony count. Six of the years were to be executed, with three years to be served in the Department of Correction and three years to be served through Community Corrections. The remaining four years were to be suspended, with one year of probation. This appeal ensued.

Although acknowledging that his sentence “could be worse,” Clay maintains that his sentence is inappropriate. Appellant’s Br. at 7. Pursuant to Indiana Appellate Rule 7(B), this Court may “revise a sentence authorized by statute if after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” A defendant must persuade the appellate court that his sentence has met the inappropriateness standard of review. *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218.

Clay contends that the nature of the offense was not particularly extraordinary, nor was it brought to the attention of the police due to suspicious drug activity. While we agree that the nature of the offense may not be particularly egregious standing alone, Clay’s criminal history, which spans over two decades, does not reflect favorably on his character. Clay has nine prior convictions, of which three are felony convictions that include possession of cocaine in 1995 and 1996, as well as operating a motor vehicle while intoxicated in 1999. Clay’s criminal history also contains a probation revocation, a violation of the rules of Community Corrections, as well as two violations of home detention.

Regarding his character, Clay also asserts that he accepted responsibility for his actions by pleading guilty. Although our supreme court has consistently held that a defendant’s guilty plea must be given consideration in sentencing determinations, it has also held that a guilty plea lacks significance where the defendant receives a substantial benefit from the plea. *McElroy v. State*, 865 N.E.2d 584, 591-92 (Ind. 2007). In such a case, a defendant’s plea loses its significance if it was “more likely the result of pragmatism than acceptance of responsibility and remorse.” *Davies v. State*, 758 N.E.2d 981, 987 (Ind. Ct.

App. 2001). Here, Clay received a substantial benefit from the guilty plea, in exchange for which the State dismissed several charges against him, including two class A cocaine charges. The State also agreed not seek the habitual offender enhancement. Ultimately, by accepting the plea, Clay reduced his potential sentencing exposure significantly. Additionally, Clay's sentence was subject to a ten-year cap on the executed time, which further limited his sentencing exposure.

In light of these facts, we cannot conclude that Clay has persuaded us that his sentence is inappropriate.

Affirmed.

BARNES, J., and BRADFORD, J., concur.